

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

GINA KANE and)
MARY DEATHERAGE,)
)
Plaintiffs,)
)
vs.) Case No. 06-cv-0326-MJR
) CONSOLIDATED WITH
DAVID ROTH,) Case No. 06-cv-0327-MJR
VANTAGE HOMES, INC.,)
UNITED STATES OF AMERICA, and)
ROTH FAMILY LIMITED PARTNERSHIP,)
)
Defendants.)

MEMORANDUM AND ORDER

REAGAN, District Judge:

Two separate cases (Kane v. Roth, et al., No. 06-cv-0326-WDS, and Deatherage v. Roth, No. 06-cv-0327-DRH) were filed in this District and - ultimately - transferred to the undersigned District Judge, who had been assigned to this lawsuit when it *previously* was pending here. Both suits arise from an October 2004 car accident in Fairview Heights, Illinois. Mary Deatherage was a passenger in a vehicle being driven by Gina Kane. Kane's vehicle was struck by a vehicle being driven by Emmerson Buie, an F.B.I. agent, who was acting within the scope of his employment for the United States of America ("USA") at the time of the accident.

Buie was dismissed, and the USA was substituted for him, in Case No. 06-cv-0327, under the provisions of the Federal Tort Claims Act. Buie was dismissed, and the USA was *added* as a Defendant, via amended complaint in Case No. 06-cv-0326.

The undersigned Judge conducted threshold review in Case No. 06-cv-0327, found subject matter jurisdiction to lie, and tracked that case on June 22, 2006. Case No. 06-cv-0326 had not yet been tracked when Judge Stiehl granted a motion to consolidate the two cases on July 24, 2006.

Thus, now before the undersigned Judge is a single consolidated action involving both Kane's claims and Deatherage's claims against four Defendants - (1) David Roth, (2) Vantage Homes, Inc., (3) the USA, and (4) the Roth Family Limited Partnership. The parties also have filed counterclaims and/or third-party claims involving the City of Fairview Heights, Illinois.

The Court now **CLARIFIES** that - **IN ALL FUTURE PLEADINGS** - counsel shall refer to this case listing both Plaintiffs (Gina Kane and Mary Deatherage) as well as the four named Defendants and shall **LIST THE CASE NUMBER** as 06-cv-0326-MJR. After this Order, no further reference should be made to Case No. 06-cv-0327, as that case has been consolidated *into* Case No. 06-cv-0326.

The consolidation presents two problems easily rectified. First, there exist two separate complaints. Second, one case had been tracked and assigned a firm trial date, but not the lower-numbered "lead" case (the number of which now governs the consolidated whole).

The Court **DIRECTS** Plaintiffs' counsel - **by August 18, 2006** - to file a second amended complaint naming *all* parties to the consolidated action. Once any of the named Defendants has answered or otherwise responded to the second amended

complaint, the Court will track the consolidated action, assign a firm trial date, and schedule a final pretrial conference herein. The dates for the final pretrial conference and trial *may* (but will not necessarily) be the same as those assigned in the now-defunct case (No. 06-cv-0327).

The Court further CLARIFIES that the Honorable Philip M. Frazier (who had the lower-numbered case, 06-cv-0326) will be the Magistrate Judge handling the now-consolidated action.

IT IS SO ORDERED.

DATED this 28th day of July 2006.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Court